IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 28775 of 2006(A)

PETITIONER:

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1. M.K.VINOD, AGED 30 YEARS,
S/O.KUNJAPPAN, MANGALATHU HOUSE, ENANELLOOR P.O.,
VARAPETTI, KOTHAMANGALAM.

2. M.P.PRATHEESH, S/O.BHASKARAN,
MANGALATHU HOUSE, ENANELLOOR P.O.,
VARAPETTI, KOTHAMANGALAM.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

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1. VARAPETTI GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, VARAPETTI,
KOTHAMANGALAM.

2. SECRETARY, VARAPETTI GRAMA PANCHAYAT,
VARAPETTI, KOTHAMANGALAM.

3. THE DISTRICT MEDICAL OFFICER,
ERNAKULAM.

4. M.K.SIVAN, S/O.KUNJAPPAN PILLAI,
MANGALATHU HOUSE, ENANELLOOR P.O.,
VARAPETTI, KOTHAMANGALAM.

ADDL. R5. THE SENIOR ENGINEER,
DITRICT OFFICE, POLLUTION CONTROL BOARD,
ERNAKULAM.
(ADDL.R5 IS IMPLEADED AS PER THE JUDGMENT IN W.P.(C)

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.A.C.DEVY
BY G.P. SRI.K.J.MUHAMD ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 28775 of 2006

Dated this 11th day of January, 2007

JUDGMENT

The Senior Engineer of the District Office of the Pollution Control Board, Ernakulam, is impleaded suo motu as the additional 5th respondent in this writ petition. The Registry will carry out necessary corrections in the cause title.

2. The petitioners, who are neighbours of the 4th respondent, complains that the 4th respondent is conducting a chicken farm without any licence from the first respondent Panchayat. The 3rd respondent District Medical Officer of Health has reported to the Panchayat that the renewal of licence sought for by the 4th respondent shall not be issued to him in view of lack of facilities for waste disposal and the pollution problems generated by the farm of the 4th respondent. The petitioners submit that on the basis of Ext.P3, the Panchayat issued Exts.P4, P5 and P6 notices to the 4th respondent directing him to close down the chicken farm. But the 4th respondent did

not obey. The 4th respondent approached the Civil Court for an order of injunction to restrain the Panchayat from taking action against him. Ext.P7 is the order passed by the Learned Munsiff on the application for temporary injunction submitted by the 4th respondent. According to the petitioners, Ext.P7 order has attained finality in the sense that no appeal was preferred against Ext.P7 by the 4th respondent.

3. The writ petition has been filed seeking writ of mandamus commanding respondents 1 and 2, to take appropriate action against the 4th respondent for the illegal conduct of the Chicken farm and another writ of mandamus commanding respondents 1 and 2 not to renew licence in respect of chicken farm and close down the unit.

4. Heard both sides. No counter affidavit has been filed. Sri.Peeyus A.Kottam the learned counsel for the 4th respondent sought time to file counter affidavit. However, in the nature of the decision which is being taken, I think it is not necessary to grant time for filing counter affidavit. The learned counsel for the petitioner submits that there is no justification in the 4th

respondent not obeying Exts.P4, P5 and P6 particularly in the light of Ext.P7. Even now more and more chicken is being brought to the farm as a result of which hazards which are being caused to the health of the petitioner and the entire public is on the increase. Sri.Peeyus A.Kottam, the learned counsel for the 4th respondent submits that the application submitted by the 4th respondent for renewal of the licence is yet to be disposed of and an application for consent from the additional 5th respondent is also pending before that respondent. The learned counsel submitted that the 4th respondent will obey whatever directions are issued to him either by the additional 5th respondent or the 3rd respondent so that the chicken farm will be pollution free in all respects. According to the learned counsel, the farm is the sole means of livelihood for the 4th respondent and abrupt closure of the farm will result in considerable hardship to the 4th respondent.

5. Having considered the rival submissions made before me in the light of the various materials placed on record, I am of the view that interest of the petitioner will be safeguarded if the writ petition is disposed of with the following directions:

i). The additional 5th respondent will immediately conduct an inspection of the premises of the chicken farm which is being conducted by the 4th respondent with notice to the 4th respondent, Secretary of the Panchayat and also the petitioners. If the inspection reveals that the farm is causing serious pollution problems as alleged by the petitioners, the additional 5th respondent will issue appropriate direction to the 4th respondent to eradicate those problems and the 4th respondent will be bound to abide by those directions.

ii). Additional 5th respondent will submit a report to the 2nd respondent on the basis of a subsequent inspection conducted if the 4th respondent claims to have complied with all the directions given to him by the 5th respondent in his first inspection. The 2nd respondent will take into account that report also and then take a final decision on the application for renewal of licence submitted by the 4th respondent. A final decision on the application for renewal of licence will be taken by the 2nd respondent with notice to the petitioners also.

Iii). Till such time as a final decision is taken on the

application for renewal of licence as directed above, the status quo as obtaining today in the chicken farm regarding chicken strength in the farm will be maintained. It is more or less agreed before me that the present strength of the chicken in the farm is 2000. The 4th respondent shall not increase the strength of chicken above 2000 till such time as orders are passed on the renewal application.

iv). Till such time as the Pollution Control Board conducts its second visit, the 4th respondent shall not bring any fresh chicken at all to the farm.

PIUS C.KURIAKOSE
Judge

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